IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

RP.No. 33 of 2004(E)

AGAINST THE JUDGEMENT IN WA.1694/2003 Dated 21/10/2003
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PETITIONER:

THE ACCOUNTS OFFICER, OFFICE OF THE
PRINCIPAL, GENERAL MANAGER, BSNL,
TELECOMMUNICATIONS DEPARTMENT, ERNAKULAM.

BY ADV. SRI.MATHEWS K.PHILIP,SC, BSNL

RESPONDENTS: APPELLANT/2ND RESPONDENT:
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1. SANKUNTHALA KINI T., 40/6692,
GROUND FLOOR, NO.6, D.D. JUNCTION,
NEAR MALANKARA SHOPPING COMPLEX,
M.G. ROAD, ERNAKULAM.

2. THE DEPUTY TAHSILDAR, REVENUE RECOVERY
KANAYANNOOR TALUK, ERNAKULAM, KOCHI-11.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR
GOVERNMENT PLEADER

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.K. DENESAN & A.K. BASHEER, JJ.

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R.P. No. 33 OF 2004 IN
W.A. No. 1694 OF 2003

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Dated this the 9th April, 2007

O R D E R

Denesan, J.

Heard both sides.

2. Though the office has recorded that notice has been served on the 1st respondent, Advocate Sahasranaman had already entered appearance on behalf of the 1st respondent. The same learned counsel had appeared for the appellant in the writ appeal also.

3. This petition for review has been filed by the 1st respondent in W.A. No. 1694 of 2003, viz., the Accounts Officer, B.S.N.L. The Deputy Tahsildar, Revenue Recovery, Ernakulam is the 2nd respondent in the writ appeal. The appeal was disposed of directing the 1st respondent-Accounts Officer to refer the disputed bills for arbitration and directing the Arbitrator to decide the matter after hearing the appellant (1st respondent in this review petition) as expeditiously as possible and at any rate within two months of the reference. Ext. P3 demand notice was quashed in the light of the Bench decision in ***Govindankutty v. The General Manager*** {2002 (3) KLT 6}. The appellant (1st respondent in

this R.P.) was directed to pay Rs.4,000/- towards arrears of telephone charges within two weeks from the date of the judgment.

4. Counsel for the review petitioner submits that the 1st respondent failed to pay the sum of Rs.4,000/-. The Arbitrator has disposed of the matter by rendering an order in favour of the B.S.N.L. holding that the 1st respondent-subscriber is liable to pay the sum of Rs.26,890/- with interest towards telephone charges. The review petitioner apprehends that the reasons assigned by this Court in the judgment in the writ appeal for quashing Ext. P3 demand notice citing the judgment in Govindankutty's case (supra) may stand in their way in executing the order passed by the Arbitrator by having recourse to revenue recovery proceedings. Counsel for the review petitioner submits that the judgment in Govindankutty's case was reviewed in R.P. No. 495 of 2002, and therefore, that ruling is no more good law.

5. We feel that there is no basis for the review petitioner to entertain the apprehension that they may not be able to take action for recovering the amount covered by the order of the Arbitrator in the light of the judgment in W.A. No. 1694 of 2003. This is so, not only for the reason that the judgment in Govindankutty's case has been held to

be not good law but also for the reason that the cause of action for the review petitioner to proceed against the 1st respondent arises from the order of the Arbitrator, which is a fresh cause of action. The review petitioner is free to proceed to recover the amount, in accordance with law.

With the above observations, the review petition is disposed of.

K.K. DENESAN
JUDGE

A.K. BASHEER
JUDGE

jan/-